

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**KACHINA RENTALS, LLC,  
a New Mexico Limited Liability  
Company,**

Plaintiff,

vs.

Civ. No. 09-173 ACT/WDS

**MOBILE STORAGE GROUP, INC.,  
a foreign corporation, and MOBILE  
MINI, INC., a foreign corporation,**

Defendants.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on Defendants’ Mobile Storage Group, Inc. (“Mobile Storage”) and Mobile Mini, Inc.’s (“Mobile Mini”) (collectively “Defendants”) Motion to Reconsider filed July 20, 2009 [Doc. 17]. Defendants are seeking an order from the Court reconsidering its statement that “[i]t is undisputed that Mobile Storage and Mobile Mini merged.” [Doc. 15 at 13.]

The Federal Rules of Civil Procedure do not recognize a motion for reconsideration. *Computerized Thermal Imaging, Inc. v. Bloomberg, L.P.*, 312 F.3d 1292, 1296, n.3 (10<sup>th</sup> Cir. 2002) (citing *Clough v. Rush*, 959 F.2d 182, 186, n.4 (10<sup>th</sup> Cir. 1992)). However, when such a motion is filed, the Court recognizes any one of three grounds to warrant reconsideration: an intervening

change in controlling law, availability of new evidence, or the need to correct clear error or prevent manifest injustice. *Conley v. McKune*, 2005 WL 580836 at \*1 (D. Kan. Mar. 11, 2005) (citing *Major v. Benton*, 647 F.2d 110, 112 (10<sup>th</sup> Cir. 1981); *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396 (4<sup>th</sup> Cir. 1998)). Defendants assert that the Court erred.

This lawsuit involves a commercial agreement entered into between Kachina Rentals and Mobile Storage on September 24, 2007. At the time of the agreement, Kachina Rentals and Mobile Storage were rental storage companies operating in New Mexico. In the agreement, Mobile Storage sold assets to Kachina Rentals.

Plaintiff alleges in its Complaint that:

On February 22, 2008, Mobile Storage's parent company, MSG WC Holdings Corp., a Delaware corporation, ("Parent"), publically announced that it would merge with the Defendant, Mobile Mini, Inc., a Delaware corporation, ("Mobile Mini), whereby Mobile Mini being the surviving corporation and Mobile Storage becoming a direct, wholly-owned subsidiary of Mobile Mini (Merger). A copy of the News Release announcing the Merger is attached as exhibit B.

Complaint at ¶ 7.

Defendants asserts in its Motion to Dismiss [Doc. 9 at 5] that:

Subsequent to the agreement of the Parties and the execution of the Bill of Sale, in February 2008, Mobile Mini agreed to merge with an indirect parent company of Mobile Storage and, as a result of that merger and a subsequent merger with Mobile Storage's direct parent company (which closed June 27, 2008), Mobile Storage became a subsidiary of Mobile Mini.

There is a dispute as to whether Mobile Storage and Mobile Mini merged Therefore the Court's Memorandum Opinion and Order of July 6, 2009 [Doc.15] will be amended to reflect that there is a dispute as to whether "Mobile Storage and Mobile Mini merged." However, the parties have not provided sufficient information for the Court to allow it to rule on Defendants' Motion to

Dismiss Mobile Mini. Thus, the Court's ruling denying Defendant's Motion to Dismiss Mobile Mini will remain in place.

**IT IS THEREFORE ORDERED** that Mobile Storage Group, Inc. and Mobile Mini, Inc.,'s Motion to Reconsider [Doc. 17] is granted in part and the Court's Memorandum Opinion and Order of July 6, 2009 [Doc. 15] is amended to reflect that there is a dispute as to whether "Mobile Storage and Mobile Mini merged."

  
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**ALAN C. TORGERSON**  
**UNITED STATES MAGISTRATE JUDGE**